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SPEECH

OF

HON. THOMAS H. BENTON,

OF MISSOURI,

1782 - 1858

ON HIS MOTION TO POSTPONE THE OPERATION OF THE BANKRUPT ACT.

DELIVERED IN THE UNITED STATES SENATE, DECEMBER 27, 1841.

Agreeably to the notice which he had given, Mr. BENTON asked leave to bring in a bill to postpone the operation of the Bankrupt act until the first day of July, for the purpose of allowing time to pass another act more conformable to the principles of the bankrupt system, and to include banking, and other money dealing and trading corporations.

In support of his motion, Mr. B. said that, at the late extra session of Congress, an act had passed purporting to establish a uniform system of bankruptcy throughout the United States; but which in fact was no bankrupt system, nor any thing like one, but merely an insolvent law, and a property law, and a law for the general abolition of debts at the will of the debtor.

It was one of the acts which was passed according to the new rules; that is to say, fixed out of doors; and then driven through upon the high pressure principle, without allowing any amendment to be made—an *i* to be dotted, or a *t* to be crossed—unless the motion for the change came from a friend of the bill. It was a Federal Whig measure for the relief of the country, (as all the measures of the extra session were whimsically called,) and commanded the general support of the then dominant party. After all it could not have been passed except as a preliminary to the passage of the land revenue distribution bill. No bankrupt!—no distribution! This was known to be the inexorable decree. Bankrupt was the master of distribution; and though not included in the list of measures to be passed, and although posterior on the calendar, and once laid upon the table in the House, yet bankrupt availed itself of the prerogative of supremacy, and had itself taken up first, pushed ahead and passed into law, while distribution obsequiously waited behind.

The act is a bad act, passed in a bad manner, fraught with ruin and disgrace; and must be executed by the country, unless repealed by ourselves, or nullified by the judiciary. Admitting that a

bankrupt system is to be established, (though I profess myself no friend to the measure,) yet, admitting it is to come, I still say that this is not the thing! that something very different must be substituted for it, or swift destruction will overtake it, either from the people, or from the judicial tribunals. It is with this view—with the view of opening the door for a substitute—that I ask leave to bring in this bill to postpone the operation of the existing law until towards the close of the present session. The present act is to take effect on the first day of February. I propose to defer its commencement to the first day of July. And if that proposition is favorably received by the Senate, I am ready to go to work upon another bill, and to give my aid in making it as perfect as possible.

The present act cannot stand. It cannot survive a summer's trial. It will be overthrown and execrated; and it is better for its friends to anticipate its fate—lay it aside, and make another act at once—rather than to await the certain and fatal decision of the public judgment. The country knows but little about it, but that little is to its prejudice. The tactics of the extra session prevented the discussion which was necessary to elucidate it, and experience has not yet displayed its character; but a few months practical operation will display its enormity, and unite the community in the demand for its repeal.

I hold the act to be such as we have no constitutional or moral right to pass—that it is no bankrupt system in any sense of the term—that its contents are a libel upon its title—that it is purely and simply an insolvent law, a property law, and a law for the abolition of debts; and that all its provisions are subordinate to these ends, and calculated to free debtors from their creditors, with the greatest possible rapidity and the least possible trouble or expense. This is my opinion—a hard one I admit, but which I believe to be true; and I now proceed to verify it by examining the provisions of the act, and contrasting them with

the objects and provisions of a real bankrupt system, such as is known to the commercial countries of the world, and which the framers of our Constitution had in their eye when they authorized Congress to act upon the subject.

I assume as incontestable that the design and primary object of every bankrupt system ever yet known, is to benefit creditors by enabling them to save something (while there is any thing to be saved) out of an unfortunate or dishonest debtor's estate; that the system extends to the trading and money dealing classes alone, whose business requires the use of much credit; and that all the provisions of the system are subordinate to the primary design of securing creditors.—And I assume it to be equally incontestable that this act of ours is the reverse of all this; that its primary, and only, design, is to benefit debtors; that it extends to every description of debtors; and that all its provisions are framed and calculated to accomplish its design of freeing debtors from their creditors. Let us examine these provisions, and see whether I am right or wrong in the severe opinion which I pronounce.

1. First as to the *option* of making a debtor a bankrupt, and which party has the initiative in commencing the proceedings.—According to every dictate of common sense and justice, and the principle of all bankrupt systems yet known, this option belongs to the creditors; and it is for them to say whether they will commence a proceeding by which they will secure to the present estate, and may relinquish the future; or whether they will forego this advantage, and take their chance for eventual payment out of future earnings and future acquisitions. The creditors should have this option, and do have it all over the world, and especially in England, from which country we borrow our notions of bankrupt laws. The debtor may commit acts of bankruptcy, but he cannot force his creditors to proceed against him upon those acts. They do it, or not, as they deem best for their own interest. But with us all this is reversed. The option is given to the debtor, and the creditors are forced to treat him as a bankrupt whenever he may choose to say the word, although it should be against their wishes and their interests to do so.

2. Next as to the *persons* who may make themselves bankrupts under this act.—These are not merely the merchants and traders, and the bankers, brokers, and money dealers, and including all the common banks, as in Great Britain and other countries, but all descriptions of persons whatsoever who shall owe debts incurred in any way, except by breach of trust. All these, whether male or female—white, black, or red—citizen, alien or denizen—bona fide inhabitant of our Union, or fugitive from foreign lands: all these, and more too, if there are any more, may apply to our federal courts, and demand as a matter of right the full benefit of the act. It only requires them to be *persons*, and to be resident in the country at the *time* of filing the petition; and this, I take it, is broad enough to include every human being who is in our country, or who may come to it.

3. Next as to the *persons* against whom the act may operate.—This is as universal as the former. They are all persons, and all institutions, which

are, or may be creditors, without regard to citizenship, or residence, or the amount of the debt, or the place where incurred, or even whether secured by judgment already obtained for it. All may be proceeded against, and all ousted of their debts, whether absent or present, whether ignorant or cognizant of what is going on against them. Relief to the debtor is what the act intends; and that intention is not to be balked or delayed by the condition of parties or the observance of forms.

4. As to the relative position of *parties* in these proceedings.—Here the natural order of things is reversed. The debtor becomes the plaintiff, and the creditors become defendants. The debtor begins and carries on the suit, and the creditors may make defence as well as they can. And, defend as they may, they are predoomed to defeat: for the debtor is unconditionally entitled to his discharge if he follows the directions of the statute. The act is express in declaring that he shall have his discharge, and a total release from his debts, by following the words of the law; so that all he has to do is to employ an attorney, who, with the act in his hand for his guide and compass, will pilot him through the ranks of his creditors, no matter how thick and close they stand, and land him safely in the port of security.

5. As to the *conditions* on which the benefit of this act may be obtained.—These are a declaration upon oath that the party is unable to meet his debts and engagements, accompanied by a schedule of his property (if he has any) which is to be surrendered to assignees for the benefit of his creditors. Upon these conditions he becomes entitled to the benefit of the act, and a clear discharge from all his debts, whether a cent in the dollar, or nothing upon the dollar, is paid upon them or not. No matter how the estate may have been wasted—no matter what expectations of property he may have ahead: present inability is the only condition; and of that inability, the debtor is himself the judge. His declaration decides the point, and entitles him to prompt relief unless the creditors can prove fraudulent conveyances, or fraudulent concealments of property against him. Fraud is the only obstacle! as if fraud was a rare thing in the world! Frauds have been committed always, and there have been laws against them always. There are more frauds now than there ever were before, and there are more laws against them now than ever were known before. Fraud alone can prevent the discharge; yet there are a thousand ways for the debtor to destroy or consume his property, to the injury of the creditors, without making a fraudulent disposition of it. There are a thousand ways to do this, none of which are provided against by this act. The gaming table—the lottery wheel—the stock exchange—the house of ill fame—luxury—dadauchery—foolish extravagance—neglect of business—are all fatal to property: these, and a thousand other vicious courses, may produce the inability of the debtor; and yet none of these are made obstacles to his application. Frauds alone are so declared, and then they are required to be proved, and no adequate time or opportunity allowed to make the proof. With the amplest time, proof of fraudulent acts is difficult; for fraud acts in secret, and eschews light and

proof; but in the few days allowed in this act, proof is impossible. Under the British system, no person was allowed to have the benefit of the act who had lost as much as £200 by betting, or by stockjobbing, within a year; and under our act of 1800 the same principle was observed; and no person was allowed to claim the benefit of the act who had lost as much as \$300 in a year by any species of wagering whatever. By our famous extra session act, this just discrimination is dropped; and gamblers and stockjobbers are placed on a precise equality with the most honest or unfortunate debtor.

6. As to the *time* of commencing proceedings.—This is often the most important point to the creditors; and yet this important point is left to the debtor. It is a point on which there would usually be a contrariety of feeling, of interest, and of wishes between them. The creditors might wish to begin while there was something to be saved; the debtor, after every thing was used up. The creditors might wish to interpose when they saw their debtors on the road to ruin; the debtor, after he arrived at the end of the road. The creditors might prefer to wait, and take their chance for payment out of future earnings or future acquisitions; the debtor might choose to disencumber himself of old obligations at once, in order to qualify himself for the tranquil enjoyment of a future salary, a future income, a future success in business, or the future descent of an estate. For all these reasons, and others, there might be a great contrariety of interest and wishes between the parties as to the time of commencing the bankrupt proceedings. Justice and reason, and every bankrupt system upon earth, has given and would give the choice of time to the creditors; this extra session act of ours gives it to the debtors!

7. As to the *place* of trial.—This may be equally a point of difference in the wishes and interests of the two parties. The creditor might wish to have it where the debt was contracted, or where he should find the person of the debtor, or at his usual place of residence; this latter has full dominion over the place of trial. He has full dominion over it, for the trial is to be had in the district in which he resides at the time of filing his petition, or where he is doing business at that time; so that he may make the place any where that he pleases within the limits of the Union. He may select the place of trial by removing to it, or opening some line of business in it, preparatory to filing his petition. This might be very inconvenient to creditors—very inconvenient to a creditor in London or New York to attend a trial in Iowa or Wisconsin; and that upon twenty days constructive notice. But, as if it was not sufficient to bring the creditor to the district in which the debtor resides, there is a further provision in the act by which the trial may be sent to the county of the district in which the debtor has taken up his abode.

8. As to the *notice* which is to be given to the creditors.—This is of a piece with the rest—entirely to suit the debtor and not the creditor—and much better calculated to insure an *ex parte* proceeding than a full and fair trial. This notice is not to be real, but constructive. It is not to be served on the creditors, or delivered at their residences, but is to be committed to the press or the

post. A publication in a newspaper, or a letter put into the mail bag, is to be deemed legal notice to all creditors, be they where they may in the four quarters of the globe, and without the slightest evidence that they ever saw the paper or received the letter. Upon this notice the creditors are to forfeit their debts, if they do not attend in so many days and prove them up!

9. The *mode* of surrendering the property is the easiest possible for the debtor, and the worst possible for the creditors. It is not delivery of the surrendered effects, but of a list of them, with authority to the assignees to hunt up every thing, and make what they can out of it.

10. The *kind* of property which will be surrendered next claims our attention.—What kind will it be? That which is easy to be transferred, cheap to be kept, and readily converted into money, like the stock in trade of a “bankrupt” in England; or will it be the unhandy, expensive, and inconvertible property of an “insolvent” in the United States? Will it be stock in trade, or stock in the woods? Sir, it will be every thing that is unmanageable, unsaleable, and unkeepable! every thing that is worthless to receive—useless to keep—and impossible to sell. Cattle in the woods—crops in the field—wild lands without titles—vacant lots in lithographic cities—fancy stocks of all sorts—bad debts upon other insolvents—old mills—old stills—old manufactories—old wagons—old horses—old books of accounts barred by the statute of limitations, or met by set offs, or paid before, or unprovable if due and unpaid. Such is a sample of the surrendered effects of all sorts of debtors under our extra session specimen of a voluntary bankrupt system!

11. The *appointment* of the assignees, their powers and duties, are all adverse to the rights and interests of the creditors.—They are appointed by the court, take charge of all the surrendered effects they can find; are paid for taking care of it; sell it; compound with other creditors; make dividends among the creditors if they please, and if not, they have to be sued upon the bonds which the court “may” require them to give. In England, under the bankrupt system, the creditors have a controlling voice over the appointment of the assignees, and all their acts; under our law, there is no such control. The powers of the assignees are great; they are to represent the debtor—to collect property and debts—sue and compromise—to prove and to defend—and to drag every thing into the Federal courts. These courts are to become the grand absorbents of the business of the country; and matters of debt, and account, and rights of property, which ought to be tried in the county courts, or magistrates’ courts, are to be drawn into the Federal courts, to the ruin of parties and to the invasion of the rights of the States and the jurisdiction of their courts. But this is a point which will require a separate consideration, and I will refer to it again.

12. All *expenses* are to be borne by the creditors; that it is to say, all expenses must be paid out of the surrendered effects before any thing can be distributed to the creditors. These, under such a law as we have, and in managing such property as will be surrendered, will generally consume all that

is given up.—Even in England, where the bankrupt system only applies to merchants and traders, banks, bankers, and money dealers, whose effects are usually of a kind easily to be managed; even there the expenses are so great, and so usually swallow up all the property, that it has grown into a proverb, that a bankrupt's estate in the hands of assignees, is a lump of butter in a dog's mouth. The expenses of these suits under our law must become enormous, and may draw every thing into the Federal courts. All debts, large or small, against the debtor, are to be proved there; all debts due to him, and every thing that he claims upon earth, is to be sued for there. The whole country may be dragged into these courts; an army of assignees, attorneys, agents, and officers, are to be employed—all at the cost of the helpless creditors—and great and ruinous will be the expense.

13. The *proceedings* are to be rapid and cheap.—The act expressly requires them to be summary, simple, and brief, and the costs to be as low as possible, in order to facilitate the operation of the act—I quote its very words—in order to facilitate its operation to the public at large! Accordingly, in twenty days after being filed, the petition is to be heard, and the trial to be had. In ninety days the final certificate may be granted; and every creditor, let him be where he may, who does not appear within these days, and prove his debts, or disprove the petitioner's statements, or convict him of fraud—every one so failing, loses his debt forever, and is cut off from any share in the proceeds of the sales of the bankrupt's estate. To crown the celebrity of this rapid work, and that there may be no balk or delay in releasing the debtors from their creditors, the doors of the courts, like the gates of hell, are to stand perpetually open. The act expressly declares that for the reception of petitions, and the trial of these cases, all the Federal Courts, Circuit, District, and Territorial, nearly fifty in number, shall be perpetually open.

14. In the trial of the cases, all *presumptions* are to be in favor of the debtor. The burden of proof is to be always on the side of the creditor. He is to prove his own allegations, and to disprove those of the debtor; and his consent is to be implied wherever his dissent is not expressed, although absent, and ignorant of what is going on!

15. The fifth section contains the *confiscation* clause, by which all creditors who do not appear and prove their debts within the prescribed time, are to forfeit them; and all who do prove them lose the benefit of all previous proceedings to secure their own debts. Even judgments at law, and decrees in courts of equity have to be surrendered in order to come in for a share of the bankrupt's estate; so that the alternatives are between forfeiting your debt for not proving it, and losing it by proving it.

16. By the English system of bankruptcy, not only those who lose above a certain sum by betting or by gambling in stocks, but those who waste their estates by extravagant living, are excluded from the benefit of the act. With us there is no distinction. The gambler, fresh from the black leg den—the “bull” or the “bear,” straight from the stock exchange—the spendthrift, fresh from his debauch

and folly, are all upon a level with the frugal, the industrious, and the unfortunate.

17. Then comes the *final certificate*; and here the greatest outrage of the whole remains to be perpetrated. The final certificate is to cancel the debt; and this certificate, under every bankrupt system ever known, must be signed by a large majority of the creditors—by four-fifths in number and value in England, and by two-thirds under the act established in the United States in 1800. Under our new-fangled, extra session system, all this is reversed. The certificate of the court alone, without the concurrence of a single creditor, is final! extinguishes the debt, and releases all future acquisitions of the debtor! This is as immoral as it is unjust and unconstitutional, and contrary to the whole design and policy of a bankrupt system. It takes away a debt without the consent of the creditor, deprives the debtor of all inducement to act fairly towards his creditor, and demoralizes society by putting it into the power of every individual to sponge his debt when he pleases. While the signature of the creditors was necessary, a salutary restraint was held over the conduct of the debtor. He felt himself bound to act fairly by his creditor—to pay him if he could—if he could not, to preserve at least his good opinion by the frankness and integrity of his conduct. To debtors who behaved thus, it rarely happened that the creditors refused a certificate: on the contrary, they often set him up again in business. Still, if they chose to refuse the certificate, they had a right to do it, for the Government had no right to cancel their debt without their consent. This is a point which I make against this act. It cancels the debt, and releases future acquisitions of property, without the consent of the creditor; and assumes to do it by virtue of the bankrupt power. I say the bankrupt power extends to no such iniquitous proceeding—that it is a gross perversion and misapplication of the system—that the act is null and void—that no judge ought to execute it—and I here declare before God and man, that if I was a judge I would not execute it.

18. Finally, as to the *duration* of the act. This is intended to be permanent. There is no limitation upon its duration, and no limitation upon the number of times that the same person may take advantage of it. The only restraint upon its continued use by the same person is in the condition prescribed in the 12th section, and which requires seventy-five per centum of the debts to be paid at the previous discharge, in order to entitle the same person to be discharged again: and so on, as long as he can pay seventy-five per centum. Upon this condition, a man may become a bankrupt as often as he pleases; and as the operation can be performed in ninety days, (which is four times a year,) and twenty-five per centum be cleared every time on the whole amount of his debts, it may become a very profitable business, and be the means of introducing a new application of the credit system, and open up a new line of enterprise to the modern financiers of the world, who may choose to congregate in our America for the purpose of engaging in it.

This, sir, is the act—its principle and its leading details. This is what is called voluntary bank-

ruptcy! a thing unknown to the legislation of the world, until hatched into existence under the hot incubation of the extra session. This is voluntary bankruptcy! And what is it but an insolvent law, for the abolition of debts at the will of the debtor? What is it but a property law, for the payment of debts with property, where the debtor has any, and without property where he has none?

Taken under its best and most favorable aspect, and it is a property law, by virtue of which the debtor can extinguish his debt by surrendering his property, be it much or little, and whether the creditor consents or not. This is the best aspect under which it can be viewed; and, seen in this light, it is unconstitutional and iniquitous, and incomparably worse than any property law ever passed by the States. The property laws passed by some of the States were at least conditional, and optionary, and required the property to be worth more than the debt for which it was tendered, with the privilege to the creditor to refuse it if he pleased, and take security for the payment of his debt within a given time. The judicial tribunals nullified these laws of the States as unconstitutional; and public opinion condemned them as immoral. But how infinitely worse is this Federal property law which Congress has enacted for the whole Union! Under the State laws it was only when the creditor had pushed his debtor to execution, that property could be tendered to him at all: here, under our Congress law, it can be tendered at any time, even when the creditor has brought no suit, and is no way pressing or pushing his debtor, and would be willing to give him time, and take the chance of pay gradually out of his future earnings. Under the State laws the property was valued; and, if accepted, only counted, as far as it went, at a deduction of one-third or one-fourth of its value: here, under our law, there is no valuation, and the debt is extinguished by the tender, be the amount little or much, something or nothing. Under the State laws the creditor might refuse the property, and have security for the debt and the interest: under this property law of Congress, there is no option—no right of refusal and election of security: the tender is absolute, and extinguishes the debt, whether accepted or not—whether worth much, little, or nothing. Finally, when property was tendered under the State laws, and accepted by the creditor, he received it himself, and kept it himself, and sold it himself to the best advantage, paying costs and charges to nobody: under our law, to the contrary, the surrendered property—or rather the list of it (for nothing is delivered)—goes to the assignees; and they hunt it up, gather it together, keep it, sell it, pay themselves for their trouble and expenses (which will usually consume the whole) and pay over the remainder, if any thing, to the insulted and plundered creditors.

Taken under its best aspect, and this act is a property law, such as no State or the Congress of the United States has a right to pass; such as no State has ever passed; such as no human being ever dreamed of when our Constitution was formed, nor for fifty years after it. Taken under its real and proper aspect, and it is an insolvent law; and is, in that respect, an unconstitutional inva-

sion of the rights of the States to pass such laws, and must, during its existence, silence and nullify the State laws; as two sets of laws from the two different Governments cannot be in force at the same time, and the federal authority overrides that of the States when they act upon the same subject. Taken at the best, it is a law to discharge debts by tendering property; but Congress can no more make such a law than a State can. True, the prohibitory clause in the Constitution only mentions States; but it was not necessary to mention Congress, which can only do what it is authorized to do.

The bankrupt clause in the Constitution cannot cover this act. That clause authorizes nothing but the establishment of the system of bankruptcy known in England at the time of the adoption of our Constitution; namely, an act for the benefit of creditors, to enable them to secure something out of a debtor's estate which was going to ruin; it was confined in its operation to the trading and money dealing classes, including all the banks which were not specially excepted by law; the remedy was in the hands of creditors, to commence it when they thought proper; and the final discharge of the bankrupt was completely in their hands. They did not grant the discharge unless four-fifths of the creditors in number and value concurred in it. This was and is the English system. It was the system in the contemplation of the framers of the Constitution at the time they adopted it. This we know from the history of the times, from the debates of the convention as reported by Mr. Madison, and by the contemporaneous exposition of the Constitution in the early bills brought into Congress to establish a bankrupt system; in the bill which was passed into a law in the year 1800, and in all the bills since brought into either House of Congress, until the disease of the times hatched this strange act into existence during the heats of the late Presidential election. The action of Congress for fifty years—from 1780 till the late Presidential election—was a faithful exposition of the bankrupt clause in the Constitution; that action was conformable to the English system, except in not including banks, (for all the banks of Great Britain are subject to the bankrupt law, except the Bank of England, and a few others expressly excepted;) and all that long course of action and exposition of meaning utterly condemns such an act as the extra session has given us. Our act reverses the bankrupt system—makes it act against its intention—and is therefore null and void. Suppose other parts of the instrument were reversed in their object, the selection of the jury given to the prosecutor instead of the accused, and the writ of habeas corpus given to the jailor, instead of the prisoner; would any court observe such acts, although they might bear the title of acts to establish the trial by jury, and to preserve the writ of habeas corpus?

I have shown that this act is unconstitutional, because it is a perversion and flagrant abuse of the authority to establish a bankrupt system, and because it is an invasion of the State's right to pass insolvent laws. I will now show it to be unconstitutional, upon other and distinct grounds; and that is, that it is an invasion of the judicial power of the States. By the Constitution of the United

States, the jurisdiction of the Federal courts is limited and circumscribed, both as to the persons who may be parties before it—the subject-matter of controversy—and the amount in dispute. The parties are to be inhabitants of different States—the subject-matter is to grow out of Federal laws or treaties—and the amount is limited to \$500 in the district courts, and \$2 000 in the circuit. These limitations leave all the home transactions, dealings, and controversies of the inhabitants of a State, to be settled at home, under the State laws, and by tribunals adapted to the purpose. Every State has established its judicial system, and that in a way to carry justice down to every man's door: for besides the courts of the county, which have very general jurisdiction, there are the justices', or township courts, taking cognizance of smaller matters, and despatching the slighter controversies of the citizens with the greatest celerity and economy both of time and money. Under this act, the whole civil business of all the courts of a State between its own citizens, from the supreme tribunal, where great matters are settled, down to the justice's court, where the smallest demands were adjudicated, may go into the federal courts. For every debtor whatsoever, may file his petition in those courts: this carries all his creditors into those courts, even for the small amounts which they might have sued for before a justice of the peace. There is no minimum upon the value of the matter in controversy which may thus be brought before the federal judiciary; and so completely are the State courts nullified, that unsatisfied judgments obtained in them by creditors are arrested and vacated, and the plaintiff brought into the federal court to re-establish his claim under the penalty of seeing it forfeited! This is carrying the bankrupt system beyond its range. Within its sphere, I acknowledge it may invade and supersede the State courts: I admit its supremacy to the extent of the fair operations of a bankrupt system. Confine the system to its sphere, and within that it overrides the State laws and the State courts. Confine it to the settlement of questions in bankruptcy arising under a real bankrupt law, and all is fair; but it is absurd and preposterous to think of drawing all the dealings between neighbor and neighbor into the vortex of these courts under the assumption of establishing a bankrupt system. For this reason, in addition to the others, the act is unconstitutional and void. To sum all up in a few words, I affirm it to be unconstitutional—

First. Because it is not a bankrupt system within the meaning of that term as used in the Constitution.

Secondly. Because it is an insolvent law, and is, in that respect, an invasion of the rights of the States to pass such laws.

Thirdly. Because it is a property law, and such as no State or the Congress of the United States has any right to pass.

Fourthly. Because it is an invasion of State jurisdiction, in drawing into the federal judiciary the trial of causes properly triable in the State tribunals.

Our famous act proceeds upon the scheme of making two sorts of bankruptcy, one voluntary and the other involuntary; and in doing so, has

made all voluntary; for even the merchants and traders, bankers and brokers, who are made subject to involuntary bankruptcy at the suit of their creditors, have yet the privilege of being voluntary bankrupts upon their own hook! and certainly will choose their own time to anticipate their creditors, and commence proceedings when it suits themselves. Besides, the distinction is nothing; for except in the first step, all the rest of the proceedings are the same. Every subsequent step, after the first petition, is the same; and the final certificate is equally granted in both cases by the court alone, and without the consent of the creditors. This shows that the involuntary bankruptcy, as it is called, is a mere illusion and a sham: that all is voluntary if the debtor chooses to make it so; and whether he does or not, the whole proceeding is precisely the same with the exception of filing the first petition.

And now as for this thing called voluntary bankruptcy. I deny its existence in any code of bankruptcy in the world, and challenge its authors to produce its like. I do this with a full knowledge of the sixth and seventh sections of the act of the sixth of George IV. for the consolidation and simplification of the bankrupt acts. I know these sections, and that this bill assumes to be founded upon them: but it had as well assume to be founded upon the Koran. There is no earthly similitude or homogeneity between them. They are aliens and strangers to each other. What are the provisions of this act of George IV? Simply a permission to the merchants, traders, bankers, brokers and money dealers, which the act makes subject to bankruptcy; simply a permission to them to invite their creditors to treat them as bankrupts by making a judicial declaration, and a gazette notification, of their insolvency. It is nothing but a permission for an insolvent trader to commit an act of bankruptcy, upon which their creditors may sue out their commission if they please, and that within a briefly limited time; if they do, the rest of the proceedings are precisely the same as in other cases; if they do not, the act stands for nothing, and draws no consequence after it.

Here are the sections: listen to them and hear what they say:

"*Sec. 6. And it be further enacted*, That if any such trader shall file in the office of the Lord Chancellor's Secretary of bankrupts a declaration in writing signed by such trader and attested by an attorney or solicitor, that he is insolvent or unable to meet his engagements, the said Secretary of bankrupts or his deputy shall sign a memorandum that such declaration hath been filed; which memorandum shall be authority for the printer of the London Gazette to insert an advertisement of such declaration therein; and every such declaration shall, after such advertisement inserted as aforesaid, be an act of bankruptcy committed by such trader at the time when such declaration was filed: but no commission shall issue thereupon, unless it be sued out within two calendar months next after the insertion of such advertisement, and unless such advertisement shall have been inserted in the London Gazette within eight days after such declaration filed. And no docket shall be struck upon such act of bankruptcy before the expiration of four days next after such insertion of such advertisement, in case such commission is to be executed in London; or before the expiration of eight days next after such insertion, in case such commission is to be executed in the country; and the Gazette containing such advertisement shall be evidence to be received of such declaration having been filed.

"*Sec. 7. And be it further enacted*, That no commission under which the adjudication shall be grounded on the act of bankruptcy, being the filing of such declaration, shall be deemed invalid by reason of such declaration having been concerted

or agreed upon between the bankrupt and any creditor or other persons."

These are the sections of the act of George IV, which have been relied upon to justify the anomalous act of our extra session. I know of nothing else to which to which it can be referred, (and this is forty years posterior to our Declaration of Independence,) and certainly there never was a more gross and flagrant misconception of a thing than of these two sections. They are nothing but what I have stated them to be, and read them to be: mere permissions to an insolvent trader to commit a specified act of bankruptcy, and to do it, if he pleases, upon consultation with his friends and creditors; but which act lies dormant, and dies within two months, unless the creditors choose to proceed upon it. And in that case they are to take out a commission, and proceed in every thing precisely as in the case of proceedings commenced by themselves upon any other act of bankruptcy enumerated in the statute. The idea of voluntary bankruptcy, such as we have established here, never entered the head of an English Parliament, and here we owe it entirely to the diseased state of the times, and to the frightful conjunction of banking and politics, and mixing up the business of the country with the Federal elections.

The bill was brought in by the Senator from Mississippi, now in his seat [MR. HENDERSON;] but he was not the author of it. It was conceived and drawn up before the Presidential election, to catch the votes of the 500,000 persons, as it was believed, who wanted its benefit: but it was not passed before the election and never should have been passed. It is a frightful result of mixing the elections with the business of the country—of making political capital out of private rights—of making party questions out of legislative subjects; for this was a party question, the exceptions either way being but few.

The English are tired of their system. Though a real bankrupt system, they are weary of it, and wish it had never been established. Their most eminent jurists—such as Lord Brougham—condemn the whole scheme—regret that it is saddled upon the country—and wish they could get rid of it; and are we to take up not merely what they condemn upon trial, but that which is a thousand times worse?

This act will not stand. It is too bad to stand. We have made an experiment of a bankrupt system once before, (a thousand times better than this,) and with a result which should not be forgotten now. The Federalists of 1800 passed a bankrupt act in the last year of their reign under the elder Mr. Adams: it was repealed by the first Democratic Congress under the administration of Mr. Jefferson. The act of 1800 was fairly and in good faith a bankrupt act, confined to merchants, traders, bankers, brokers, and money dealers; and conforming in all its features, and in its whole design and object, to the recognised bankrupt systems of the world; yet it could not stand. Though avowedly an experiment, and limited to five years' duration, it was not permitted to live out that term. It was repealed in three years. It was passed in the last year of Federalism, and repealed in the first year of Democracy; and so it will be with this

act, which is as much worse than that of 1800 as modern Whigery is worse than ancient Federalism. It was passed in the first year of Federalism revived: it will be repealed in the first year of Democracy restored.

I am no friend to the bankrupt system, and believe there is but little occasion for such a system in the United States, except for the banking and money dealing corporations. For the misconduct of these institutions, it is the prompt and sovereign remedy; yet they are left out of the bill. Left out of it as defendants, but admitted as plaintiffs for they are to have all the benefit of the act against individuals while exempted from its operation against themselves. Such is the absurdity of the act! The bankrupt process is the proper remedy for these institutions which set all law, all Government, all morals at defiance; and pillage and plunder the country as they please. For them it is the proper remedy. Between individuals, I see no great occasion for it. There is but little occasion in our age for Government to interfere between debtor and creditor, further than it is done by the State laws. These have carried relaxation and indulgence very far, without the aid of a general sponging law from the Federal Government. A debt is a sacred thing, and should be but little interfered with by any Government. No man becomes the debtor of another without receiving something from him—money, labor, property, or credit; or by enabling somebody else to receive these things. He receives something, and receives it by promising to pay for it; and this promise becomes a sacred obligation which morality sanctions, which our Constitution forbids the States to impair, and which Congress has no more right to impair than they have. It is a tremendous exertion of power for any Government to cancel debts without payment, even upon the surrender of all the debtor's present property. Property is not always the source of credit, nor the only means of payment. Men are credited upon their character—upon their profession—upon their trade—upon their capacity for labor or for business—upon their expectations—upon their station in society—from the office which they fill—upon the prospect of future earnings or acquisitions: men are credited upon all these considerations; and creditors have a right to retain these chances in their hands, and look out for future payment, if they cannot receive it at present. It is in vain to talk of the cruelty and the hardheartedness of creditors. There is but little of it in the times in which we live; and the State laws are every where a barrier against oppression. The tendency of the times is the other way—in favor of the relaxation instead the rigorous enforcement of obligations. Few creditors oppress their debtors. Many debtors defraud their creditors. We have nearly all been practising lawyers; and doubtless every Senator who has been at the bar can say what I can say, that for one creditor oppressing his debtor, they have seen an hundred debtors defrauding their creditors.

I am no friend even to a bona fide bankrupt system, between man and man, such as prevails in England and other commercial countries; but as to this extra session act of ours, the impious offspring

of electioneering, I detest and abhor it! It is an insult and outrage upon the 19th century. It is big with shame and ruin to the present age, and with disastrous influence upon posterity. Millions upon millions of debt must be sponged by it. Thousands and tens of thousands of families must be reduced to want by it. Hundreds of banks must perish under it, every one carrying loss and injury to the community within its sphere. The rising generation must feel its baleful influence. The facility with which debts can be thrown off, will be an inducement to contract them, and a license to spend in idleness or vice what should have gone to the creditor. Can such a law stand with-

out demoralizing posterity? without teaching the rising generations to become spendthrifts and bankrupts, instead of becoming useful and respectable members of society? In mercy to posterity, if not in justice to ourselves, we should repeal this law. We should not suffer the young and flexible mind to say to itself, while contracting a debt, *the law stands ready to release me from it whenever I choose to throw it down.*

I do my part now towards preventing these evils, by moving to postpone this act until there is time to make another more conformable to the established systems of bankruptcy, and to include the money dealing and trading corporations. I would prefer a direct repeal, and a simple act against banks and trading corporations alone; but the public mind is not yet ripe for that great measure. Mr. B. then asked leave to bring in his bill.